

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Amendment of Parts 1, 21, 73, 74 and 101 |) | |
| of the Commission's Rules to Facilitate the |) | WT Docket 03-66 |
| Provision of Fixed and Mobile Broadband |) | (Terminated) |
| Access, Educational and Other Advanced |) | |
| Services in the 2150-2162 and 2500-2690 |) | WT Docket No. 18-120 |
| MHz Bands Transforming the 2.5 GHz |) | |
| Band |) | |

**JOINT COMMENTS OF
SOUTH FLORIDA EBS LICENSEES**

SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA

FLORIDA ATLANTIC UNIVERSITY

FLORIDA GATEWAY COLLEGE

August 8, 2018

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Summary

The School Board of Miami-Dade County, Florida; The School Board of Broward County, Florida; The School Board of Palm Beach County, Florida; Florida Atlantic University; and Florida Gateway College, submit Joint Comments in this proceeding. These “South Florida EBS Licensees” applaud this Commission’s effort, after a twenty year freeze, to license the remaining “Unassigned EBS Spectrum”, thereby unlocking its potential in previously unlicensed areas for both educational as well as advanced wireless commercial uses.

South Florida EBS Licensees believe that the current leasing regime, facilitated by the Commission in 1983, has been largely successful in reserving spectrum for education, promoting educational use and development, providing a private source of funding for educational services and a pipeline for reduced cost equipment, while freeing up significant excess capacity for publicly beneficial advanced commercial wireless services. Accordingly, South Florida EBS Licensees oppose incentive or overlay auctions and wholesale revision of EBS Rules to facilitate transfer to commercial entities and instead urge the Commission to substantially preserve the reserved educational nature of the band, while allowing the current excess capacity leasing model combined with secondary market leasing to remain the vehicle for promoting spectrum available in the band for advanced commercial wireless services and ensuring that such available capacity is put to its highest valued use.

South Florida EBS Licensees support the expansion of existing EBS license GSAs to county boundaries so as to remove gaps, better align service areas with educational territorial service obligations and create a more rational and consistent service area model. Following such expansions, the Commission should license the

presently “Unassigned EBS Spectrum” by county and group initially through special windows for Native American Tribes in rural counties and then first time local EBS eligible schools and government entities. Applications should be processed on a first-come first-served basis to avoid MX situations and auctions. Additionally, to ensure availability and reduce warehousing, waste and abuse of the process, each applicant should be limited to two channel groups and should be prohibited from entering into agreements or letters of intent with commercial operators or spectrum aggregators in advance of the issuance of a permit, that provide for application preparation, funding or post window leasing of the channels. Any Unassigned EBS Spectrum remaining following these reserved eligibility windows should be licensed by open eligibility spectrum auction to ensure that all EBS spectrum is licensed and available for service. Any licenses issued to commercial entities should contain a notation on the authorization of its commercial nature and should be subject to the Part 27 Rules applicable to the commercial BRS service.

Finally, The South Florida EBS Licensees, urge the Commission to avoid unnecessary wholesale rule revisions and to limit any EBS rule changes regarding educational usage, substantial service, renewal, leasing, or discontinuation of service to those deemed absolutely necessary, keeping in mind the varied types of educational services provided, the varied size, capabilities, and financial wherewithal of educational licensees, the unique problems and operational restrictions confronting educational institutions and the potential impact that any rule change would have on existence long term excess capacity leases. All new reserved EBS Licenses should be subjected to the same operating and leasing rules as existing EBS Licenses.

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**JOINT COMMENTS OF
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The School Board of Miami-Dade County, Florida; The School Board of Broward County, Florida; The School Board of Palm Beach County, Florida; Florida Atlantic University; and Florida Gateway College (“The South Florida EBS Licensees”), pursuant to Section 1.415(b) of the Commission’s Rules, hereby submit Joint Comments in the above-captioned proceeding regarding the licensing of additional EBS spectrum in the 2.5 GHz band and the potential transformation of the EBS rules to facilitate spectrum availability for commercial 5G and other deployments.¹ The South Florida EBS Licensees applaud the Commission’s attempt, after a freeze of more than twenty years, to address the licensing of the remainder of the EBS band (the “Unassigned EBS Spectrum”), thereby unlocking its potential in previously unlicensed areas for

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking in WT Docket 18-120, FCC 18-59, released May 10, 2018 (terminating WT 03-66 and incorporating comments filed within that proceeding into WT Docket 18-120)(NPRM). By an Order released on June, 12, 2018, the Commission provided an extension of time for the filing of Comments, until August 8, 2018.

both educational as well as commercial usages, such as 5G. However, in order to achieve the results desired by the Commission, neither a drastic transformation nor an auctioning off of the band to commercial operators is required. Since 1983, when the Commission allowed for the leasing out of excess EBS capacity, educators have been successfully partnering with commercial entities, under existing FCC Rules, so as to further the development of valuable educational services, while simultaneously facilitating the general availability of excess capacity for evolving commercial services on this band that otherwise benefit the public. The South Florida EBS Licensees generally support the retention of the EBS licensing eligibility restrictions, the preservation of existing leasing rules and the continued use of voluntary leasing to make excess capacity under existing and newly issued licenses available for new commercial services like 5G.

Who We Are

The South Florida EBS Licensees represent a cross section of educational stations licensed on the EBS band and include three of the ten largest school districts in the nation as well as a State University and a State College.² Each of the schools hold EBS licenses and each has contributed its excess capacity, through leasing, to allow for the construction of large robust commercial communications platforms with enhanced speed and broadband capacity on campus and within their communities. In all cases, as part of their leasing arrangements, the schools have received and have made use of broadband enabled devices for educational and administrative uses by students and faculty.³ Additionally, the facilitation of these robust networks, using leased

² Miami-Dade is the 4th largest school district in the nation, Broward is the 6th and Palm Beach the 10th. These School Districts covering three Florida Counties, are responsible for the education of over 820,000 students, employ over 46,000 teachers and maintain over 975 separate schools. FAU has an enrollment in excess of 30,000 students annually at 6 campuses and FGC serves 2,700 students.

³ For example, FAU has provided devices: 1) through its financial aid office to students who cannot afford internet service, 2) through the office of admissions to its travelling recruiters, 3) to nursing faculty during community service visits, 4) for internet backup for campus routers, 5) for technical support staff, and 6) to graduate students living in remote environmental research housing; Miami-Dade in addition to its own internal distribution for various classes to

educational spectrum, has allowed students, faculty and their families more access, through both provided and commercially available wireless devices, to educational content on campus, at home and throughout the community, thereby contributing to the incremental bridging of the digital divide and the homework gap. Under each lease, funds generated through the leasing of excess capacity have been channeled into projects that help to enlarge the communications and wireless capacity and educational capabilities of these institutions.⁴ In addition, a number of licensees have continued to use the mid-band capacity of their channels for traditional video distribution networks. For example, in 2012 Miami-Dade and Broward school districts invested over ten million dollars to modify, modernize and upgrade their EBS video distribution networks at both their transmission facilities and at almost 800 schools.⁵

DISCUSSION

I Eligibility Requirements Should be Preserved for Existing and New Window Licenses but Could be Opened to Commercial Entities for Auctioned Spectrum.

EBS eligibility restrictions generally should be retained, and commercial access to excess capacity should be obtained through the current leasing model, as has been done successfully for

teachers and administration employees has distributed devices through its virtual school program to hospitalized and homebound students and their teachers to facilitate remote education.

⁴ For example FAU has used funds generated from its leasing of EBS spectrum for such projects as the construction and support of a new IP based streaming video platform, as well as network and classroom technology buildouts. Miami-Dade and Broward each use funds received from their leases to subsidize the operation of their programming and online production departments as well as technology and communications projects within the districts.

⁵ In 2012 both Miami-Dade and Broward converted their video distribution systems to digital and changed frequencies to comply with the FCC's new band plan. Broward's system was redesigned and upgraded to implement a state of the art digital video distribution system to provide 8 discrete video streams to most of its 327 schools using its two of its mid-band channels. Through BECON Broward produces and provides produced educational programming to its schools, classrooms and other district sites. Miami-Dade similarly updated its digital video distribution system both at its studios and at most of its 467 schools and district sites to provide 12 video streams using two of its mid-band channels. Miami-Dade uses its production and distribution capabilities to provide both produced and procured educational and informational programming to its schools.

thirty five years.⁶ While Commissioners routinely list as a major goal the bridging of the digital divide as well as the homework gap, the Commission seems too willing to consider an unnecessary revision of EBS rules that would seek to reallocate either immediately or through gradual attrition the only spectrum in the United States reserved for and licensed exclusively to educational entities, and which with its unique private funding source has proved itself able to leverage commercial platforms to address both the digital divide and the homework gap.⁷ If some of the Commissioners are correct in their statements that as many as 90% of EBS licensees lease some or all of their excess capacity to commercial operators, then it would seem that frequencies in this band are already generally available for the deployment of consumer beneficial services such as 5G, and through an active secondary marketplace may be readily and quickly realigned through subleasing to their highest and most valued use.⁸

Over the last thirty five years, EBS licensees and their Lessee operators have repeatedly deployed new services that have required equipment development and time consuming rule changes. While a number of these services ultimately were overtaken by technological, and marketplace changes, educational licensees have been involved with and have benefited from the deployment and growth of each of these services, making the leasing model a wonderful success

⁶ The Current Leasing model was implemented by the Commission in *Amendment of the Commission's Rules with Regard to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; and Applications for an Experimental Station and Establishment of Multi-Channel Systems*, Report and Order, 94 FCC 2d 1203 (1983).

⁷ In a November 17, 2016 letter to Senator Tom Udall, then FCC Chairman Wheeler acknowledged that the U.S. still faces the challenge of having too many students struggling to keep up with schoolwork because they do not have access to internet at home (the Homework Gap), but explained that E-rate has not been extended to such off-campus internet services due to funding demands of on-campus services and statutory provisions.

⁸ In the past the Commission has concluded that retaining an educational reserve was neither inconsistent with its goal of moving spectrum to its highest valued use, nor would it impede market forces. See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 at para. 160 (2004) (*BRS/EBS R&O* or *BRS/EBS FNPRM*). This would appear to have been borne out by the current robust level of leasing.

story. As correctly predicted by the FCC in 1983, with the partial commercial exploitation of the band through leasing, educators have reaped the benefits of lease revenues and the decreased cost of commercially developed equipment usable in their educational deployments. These included: transmitters, antennas and set top boxes from wireless cable; modems and antennas from early fixed wireless; and transmitters, antennas, network management equipment and diverse enabled phones, tablets and computers from early WiMax mobile wireless deployments. EBS licensees have only begun to see the equipment cost benefits of LTE deployments, not just through cheap LTE platform enabled hotspots and devices, but in all system equipment allowing some educators to launch entire independent LTE networks on their campuses and even across entire school districts.⁹

Allowing commercial entities to own educational licenses would only thwart current educational usage efforts as well as all future potential for educational use on the band, and needlessly remove an important source of private funding for educational communications and broadband deployments that furthers one of the Commission's longstanding goals, while doing little to ensure the more rapid or successful nationwide deployment of 5G.¹⁰ In fact both Sprint and T-Mobile have recently admitted that the propagation limitations of the EBS Band make it

⁹ Future educational applications on this band, while benefiting from equipment and platforms developed by commercial partners, will flow from advances in the understanding of how technology can play a role in modern education. All of the school districts participating in these Comments have experimented with one computer per student programs known as one-to-one computing in education. With initiatives like these comes the need for broadband connectivity, as well as mobility, security, and privacy filtering. EBS spectrum allows educational institutions to own the wireless digital connection between students and teachers, and provides for each of the security services and features necessary for student safety. It is anticipated that private platforms on retained channels will in the future provide the necessary gateway to connect students and teachers to Personalized Learning Environments. Additionally, new technologies such as ATSC 3.0 will allow teachers to incorporate interactive mobile learning programs into such systems. SBBC is currently testing ATSC 3.0 standards at EBS frequencies.

¹⁰ It is anticipated that if eligibility were open, an operator, finding itself able to own EBS licenses, might well seek to exit its current leases, depress offered rates for new leases or forego new leasing altogether and only advance purchase offers. Such a tactic might prove disastrous for an EBS licensee in a market where there is but a single active excess capacity Lessee.

less suited as a solution for 5G deployments outside of urban metropolitan areas.¹¹ Nonetheless, if Sprint or T-Mobile were allowed to bid on EBS spectrum, it is believed that they would do so reflexively, as a means of securing it while awaiting technological advances that might make its deployment in rural areas more practical. Because EBS Licensees have readily leased to both large national carriers as well as local and regional carriers, the excess capacity leasing model will avoid warehousing and will best ensure that the Spectrum remains available for educational use and that EBS excess capacity can be rapidly put to its highest and most valued uses by local, regional and national commercial operators in both large and small markets.

The FCC should therefore allow reserved band EBS licensees to continue to voluntarily lease their excess capacity and should take no actions that would interfere with the negotiated services and obligations under existing leases. Operators and Licensees have invested and designed systems and services based on their current agreements and have a legitimate expectation of obtaining the full benefit of their bargains. This model should be extended to any new EBS licenses awarded through special windows under this proceeding.

II Wholesale Revisions of the EBS Rules are Unnecessary and Any Revisions Should be Kept to a Minimum to Avoid Disruption to Operations or Leases.

The South Florida EBS Licensees, opposing general open eligibility, see no need for the FCC to drastically streamline the EBS Rules to promote its transfer to commercial entities. Currently, the Commission allows grandfathered EBS licenses operating on BRS Spectrum to be

¹¹ Because of issues with building penetration and signal propagation characteristics of the EBS band, 5G deployments would require a build density that would make it expensive and less practical as a vehicle for 5G deployments in rural and lower population density locations outside major metropolitan areas. *See Transfer of Control Application from Sprint Corporation to T-Mobile US, Inc.* FCC File No. 0008224209 (June 18, 2018) at Exhibit E, Declaration of John Saw, Sprint CTO ¶¶ 23 and 31 and at Exhibit B, Declaration of Neville Ray, T-Mobile CTO at ¶ 36.

regulated under the EBS Rules and to not be subject to normal BRS rules. The Commission would be free to take the same approach with any commercial open eligibility licenses issued through auction, noting their special nature on the authorizations and regulating them as BRS licenses subject to all of the buildout, operating and renewal requirements of that commercial service and freeing them from any of the requirements or restrictions of the EBS Rules.

With regard to any needed revisions or modernization of rules related to educational usage, changes should only be made that are narrowly tailored to the Commission's goals and not overly burdensome on educational institutions, keeping in mind the diverse usage to which the spectrum is put, the fact that buildouts are often layered on top of commercial infrastructure - wholly outside the control of EBS Licensees, and the disparity in size, as well as operational and financial capabilities of different educational institutions. While the educational usage rule, based on hours per channel per week, is ill suited to broadband services, the Commission must be careful not to redefine usage in such a manner as to overburden educational licensees, or to require the alteration of existing leases that provide for certain amounts of equipment and accounts. The Commission should also be mindful that educational institutions are not all capable of detailed throughput tracking of educational accounts issued to faculty and students. It is therefore suggested that any standard adopted be flexible enough to allow for video, fixed or mobile broadband and other innovative uses and not be so onerous as to require educational institutions to invest in equipment and staff needed to perform complex management or analysis of usage patterns.

With regard to renewal expectations, any rule optimally would be based on the current substantial service rules and safe harbors already applicable to EBS. As noted above, because builds are often based on the efforts of commercial lessees, the Commission should not require EBS licensees to maintain any level of build achieved while under a particular lease. Such a

requirement could encourage unfair negotiating tactics by operators as EBS licensees approach renewal dates or unfairly subject licensees to carrier-grade commercial builds at the conclusion of a lease. It is suggested that renewal standards be applied on a prospective basis, perhaps only after the expiration of current leases or at least following some ample transition period.

It is suggested that any discontinuance of operation rule be based on a service discontinuance of at least one year. For educational institutions, equipment purchases and construction contracts often require board approval and may be subject to a mandatory open bidding process. Such procedures often delay needed repairs for periods longer than experienced by commercial licensees. Further at the conclusion of a lease, it may take a licensee a reasonable period of time to secure and enter into a new lease or to implement an independent replacement buildout.

No changes are needed with regard to the current leasing rules. The mandatory “educational needs review” at 15 years and every 5 years thereafter, allows educators to reassess their educational needs and to renegotiate their lease terms if additional capacity or provided services are needed. Additionally, the current 30 year lease term is of adequate length for a commercial lessee to implement and operate any system design. Looking back on the past 30 years, all of the original lessee wireless cable companies have long ago gone out of business. In addition, the initial broadband company excess capacity lessees Worldcom, MCI and BellSouth have either gone out of business or have long ago ceased operations on this spectrum band. Accordingly, longer lease terms are not needed and are not commercially beneficial. While leases do attempt to build in payment increases to adjust for inflation, if one looks at changes in services available as well as prices of goods and services in the United States over the past 30 years, it

seems only reasonable that EBS Licensees have the opportunity to renegotiate their leases at least once every 30 years.¹²

III Rationalization is Needed to Existing Service Areas to Eliminate Coverage Gaps, Allow for Clearer Mapping and to Better Comport with Educational Service Areas.

The South Florida EBS Licensees, themselves more tightly packed and likely unable to greatly benefit from GSA expansions, generally support the original NEBSA proposal regarding the initial expansion of existing GSAs to County Boundaries to remove service gaps, before the Commission addresses the remainder of the Unassigned EBS Spectrum. As EBS expanded from 15 to 35 mile protected service areas and then to GSAs with bisected overlaps, small unserved pockets were created in otherwise well served areas and gaps were locked in between co-channel service areas. Additionally, current GSAs are difficult to map and don't translate well to identification or alignment with generally accepted geographic boundaries. Accordingly, the FCC has proposed existing GSA expansion to either census tract or county boundaries.

The South Florida EBS Licensees believe that county boundaries are the better choice. First, many school districts with licenses are tasked with the provision of educational services to entire counties. Expansion to such boundaries would assist them in rationalizing their EBS service capabilities with their educational mandate. Second, census tracts are often so small that expansions to such boundaries may produce service areas with small jutting areas or irregular borders that will create interference and service architecture problems. Finally, to the extent that

¹² For example, thirty years ago small personal computers were just arriving on the scene, cellular telephony was just being developed, there was no ubiquitous internet, online marketing, email or wired, much less wireless, broadband. In addition over the past thirty years, incomes have more than doubled, and car, home and home rental prices have more than tripled.

new licenses for Unassigned EBS Spectrum are issued by channel group on a countywide basis, initial expansions to similar borders will create a more rational and consistent licensing scheme.¹³ The South Florida EBS Licensees, also believe that any existing station that crosses a county line should expand into that county, and that due to existing lease rights and service obligations no area already covered by a GSA should be eliminated from a Licensee's GSA. In addition where multiple licenses would expand, such expansions should occur simultaneously and any overlaps should be bisected in the same manner as was used in the creation of the initial GSAs on this band.

IV Following Initial GSA Expansions, Unassigned EBS Spectrum Should be Licensed First by Special Reserved Band Window and Then by Open Eligibility Auction.

The South Florida EBS Licensees support the NEBSA proposal for two special reserved spectrum windows.¹⁴ The First would be for Native American Tribes in rural counties where they maintain significant inhabited tribal lands and the Second would be for First Time EBS Applicants that are local accredited educational institutions or government entities operating educational institutions.¹⁵

Applications would be for county-wide licenses and each applicant would be limited to a total of two 4-Channel group licenses. As educational entities are ill suited and in some cases

¹³ An initial expansion to county boundaries removes the need for the incumbent edging out window proposed in the NPRM, speeds the licensing process and reduces the burden on FCC staff and resources.

¹⁴ In 2004 the Commission, in considering and rejecting open eligibility, correctly observed: "Of particular concern to the Commission is the fact that open eligibility would mean that educational institutions and not-for-profit educational organizations that are interested in obtaining licenses will have to compete with a broader range of entities, including for-profit corporations, for future access to spectrum in the band. The challenges that educational institutions and organizations would face in obtaining access to the remaining ITFS white space would have been likely to serve as permanent barriers to their ability to acquire spectrum in this band." *BRS/EBS R&O* 19 FCC Rcd 14165 at para 162. Providing for the reserved windows avoids this problem.

¹⁵ For such entities Local should be defined as an entity with an educational facility within the relevant county, or a state or county obligation to provide educational services within that county.

barred from participating in auctions as a means of procurement, the windows should be first-come first-served to avoid mutual exclusivity and the need for auctions between Mxed parties.¹⁶ Additionally, to discourage application mills and gaming of the Commission's processes, applicants in these windows should be prohibited from entering into agreements or letters of intent with commercial operators or spectrum aggregators prior to submitting their application(s) that provide for the preparation or financing of applications, or the leasing of excess capacity on such facilities after the window. Following the issuance of an authorization, a new reserved band window based EBS licensee should be subject to the same educational usage, buildout, leasing, renewal expectancy and discontinuation of service rules as existing EBS licensees.

If after these windows, any Unassigned EBS Spectrum remains, then the Commission should auction it off in open eligibility auctions by county.¹⁷ As noted above, any open eligibility spectrum licenses issued should indicate their commercial nature and should be regulated under the BRS Rules and be subject to the buildout, operation, renewal, and discontinuation of service rules and policies related to that commercial service. If by chance an EBS eligible entity, acquires EBS spectrum at auction, then it should be issued an ordinary EBS authorization and be subject to normal EBS Rules, upon submission of a satisfactory eligibility showing under Section 27.1201 of the Rules.

The South Florida EBS Licensees do not support any overlay or incentive auction proposals. Overlays, would likely be purchased by the very commercial operators that presently lease EBS spectrum. No good could come from giving a lessor an incentive to terminate leases

¹⁶ If the Commission were to elect to employ auctions to resolve MX situations instead of the NEBSA recommended first-come first-served approach, then to avoid auction abuses, the Commission should specifically prohibit unrelated third parties from funding such auctions or reimbursing participating parties for their auction participation or auction expenditures.

¹⁷ Or, in the case of off-shore licenses within US territorial waters on the Great Lakes or in the Gulf of Mexico, by such areas that make logical sense given the likely services at issue.

and work toward the failure of educational services on current licenses where they would hold an exclusive right to licensing of the spectrum in the event of such failure. Similarly, an incentive auction would actively promote the abandonment of educational services on this band as well as the bridging of the digital divide achieved from such services in direct opposition to a repeatedly asserted Commission goal.

CONCLUSION

For the reasons set forth herein, the South Florida EBS Licensees urge the Commission to:

- 1) substantially maintain current EBS eligibility restrictions; 2) expand existing EBS licenses to county boundaries; 3) license the presently Unassigned EBS Spectrum by county and group initially through special windows for Native American Tribes in rural counties and first time local EBS eligible schools and government entities; and 4) thereafter license any remaining spectrum by open eligibility spectrum auction, while avoiding incentive or overlay auctions as unnecessary, disruptive and harmful. Additionally, the South Florida EBS Licensees request that the current excess capacity leasing mechanism be left in place for existing and new EBS reserved licenses as a proven and effective means of promoting and privately funding educational usage while freeing up significant band capacity for advanced commercial services. Finally, The South Florida EBS Licensees, urge the Commission to avoid unnecessary wholesale rule revisions and to limit any EBS rule changes regarding educational usage, substantial service, renewal, leasing and discontinuation of service to those deemed absolutely necessary, keeping in mind the varied types of educational services provided, the varied size, capabilities, and financial wherewithal of educational licensees, and the potential impact any rule change will have on existence long term excess capacity leases.

Respectfully Submitted,

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